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In re Application of	:	DECISION ON
OGATA et al	:	
Application No.: 10/524,621	:	
PCT No.: PCT/US2003/010474	:	
Int. Filing Date: 19 August 2003	:	PETITION UNDER
Priority Date: 20 August 2002	:	
Attorney Docket No.: F-8591	:	
For: ANTI-ALUMINA-BUILDUP REFRACTORIES	:	
FOR CASTING NOZZLES	:	37 CFR 1.137(a) and 1.181

This decision is in response to the "PETITION UNDER 35 USC 1.181 TO REVIVE AN UNAVOIDABLY ABANDONED APPLICATION THROUGH NO FAULT OF THE APPLICANT," filed on 14 May 2008. Applicants have submitted, inter alia, a copy of a 17 March 2005 PTO stamped itemized postcard receipt. The itemized postcard lists, inter alia, the following item: Declaration and Power of Attorney.

### **BACKGROUND**

On 15 February 2005, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1). Applicants, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because no executed Declaration or Oath was provided with the transmittal letter at such time.

On 09 August 2005, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by the International application number and international filing date. The notice indicated that the items above must be submitted within two (2) months from the date of this notice or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 19 July 2006, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) which indicated that the application is abandoned because applicant has failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905) mailed 08/09/2005 within the time period set therein.



In response to the "NOTIFICATION OF ABANDONMENT" mailed on 19 July 2007, applicants faxed on 02 May 2007 a copies of papers previous submitted to the USPTO. In addition, applicants have provided a copy of the returned/stamped receipt card acknowledging a receipt date of 17 March 2005.

### **DISCUSSION**

#### **37 CFR 1.181:**

Applicants' present petition accompanied by a copy of the following documents, filed purportedly with the USPTO as indicated in the stamped postcard:

- (1) Declaration, Petition & Power of Attorney

The postcard lists the above items and bears a USPTO date of stamp as 17 March 2007.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicant's postcard, however, is not accepted as *prima facie* that a Declaration was deposited with the U.S. Patent and Trademark Office on 17 March 2005 because it lists application 10/524,620<sup>1</sup> rather than the above mentioned application 10/524,621. That is, applicants have not submitted proof that a declaration was filed on 17 March 2005 for application 10/524,621.

### **DECISION**

The petition under 37 CFR 1.181 is **DISMISSED**, without prejudice.

#### **37 CFR 1.137(a):**

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in § 1.17(I); (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

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<sup>1</sup> Applications 10/524,620 and 10/524,621 are filed by the same law firm and share two inventors Koji OGATA and Bruce Donald HOOVER.



The petition is not deemed to satisfy the requirements under 37 CFR 1.137(a). Petitioner has not satisfied items (1) - (2) but has not satisfied item (3) under 37 CFR 1.137(a). In this application, no terminal disclaimer is required

Petitioner has provided: (1) the proper reply because the executed declaration has been filed with the petition.

With respect to item (2), petitioner has been charged the petition fee set forth in §1.17(I) of \$510.00 to petitioner's Deposit Account No.: 10-1250.

With respect to item 3, the showing of record by petitioner is inadequate to establish an unavoidable delay within the meaning of 37 CFR 1.137(a).

In this instance, Mr. Jordan has provided no proof that a declaration was filed for application 10/524,621 as the postcard provided refers to application 10/524,620. Moreover, no evidence has been provided that shows that the entire delay of filing this petition was unavoidable under 37 CFR 1.137(a).

Accordingly, the petition is deemed not to satisfy the requirements under 37 CFR 1.137(a). Therefore, because petitioner has not satisfied item (3) above, the granting of the petition under 37 CFR 1.137(a) for revival based on unavoidable delay would not be proper.

### **DECISION**

For the reasons above, the petition to revive under 37 CFR 1.137(a) is **DISMISSED** without prejudice.

The application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181". Failure to respond will result in the ABANDONMENT of the application. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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